

### **REMARKS**

Claims 1, 3-6, 8-23, and 40-41 are now pending in the application. The amendments filed after-final on December 10, 2007 were not entered per the Advisory Action mailed on December 20, 2007. In response to the Advisory Action, Applicants have further amended the claims to address clerical errors. Thus, Claims 1, 10, 11, 16, 22, 23, 40 and 41 are presently amended and Claims 2, 7, and 24-39 are cancelled. Support for these amendments is found throughout the specification as originally filed and at Page 26, line 20 to Page 27, line 8, by way of example. No new matter has been added by the amendments to the claims. Entry of these amendments and reconsideration and withdrawal of the rejections is respectfully requested.

In the Advisory Action, the Examiner noted that the recitation of cefpodoxime axetil, loraczarbacef [sic] and aztreonam were not found in the CA registry. The  $\beta$ -lactam medicaments aztreonam, cefpodoxime axetil, and loracarbacef are commonly known to those of skill in the art. Applicants note that aztreonam has registry number: 78110-38-0; and loracarbacef, also known as loracarbef, has registry number 76470-66-1. While cefpodoxime axetil does not appear to have an assigned registry number; it is well known to those of skill in the art as a lower homologue of cefpodoxime proxetil.

### **SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT**

On December 17, 2007, Applicants submitted an Information Disclosure Statement pursuant to 37 C.F.R. §1.97(i). In conjunction with the present filing of the RCE, Applicants are resubmitting this IDS for consideration by the Examiner.

### **REJECTION UNDER DOUBLE PATENTING**

Claims 1-10, 20 and 21 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of co-pending and commonly assigned Application No. 10/480,019, which has subsequently issued as U.S. Patent No. 7,288,549. As discussed above, Claims 2 and 7 have been cancelled. A Terminal Disclaimer in compliance with 37 CFR 1.321(c) was filed on December 10, 2007, which brings Claims 1, 3-6, 8-10, 20 and 21 into patentable condition. Accordingly, in light of the Terminal Disclaimer of record, Applicants respectfully request that the rejections be withdrawn.

### **ELECTION/RESTRICTIONS**

The Examiner indicates the presence of non-elected subject matter in Claims 1-9, 11-23, 40 and 41 and pursuant to Applicants' March 26, 2006 election with traverse, requires cancellation of nonelected claims or other action (37 CFR § 1.144). In addition the Examiner indicates cancellation or other action under 37 CFR § 1.144 must be made with regard to Claims 24-39, drawn to an invention nonelected with traverse in Applicants' March 26, 2006 reply. Applicants have amended Claims 1, 11, 16, 22, 23, 40 and 41 to remove reference to non-elected subject matter, and additionally, have cancelled Claims 2, 7, and 24-39. Therefore, reconsideration and withdrawal of this objection are respectfully requested.

### **REJECTION UNDER 35 U.S.C. § 112**

The Examiner reasserts the previous rejections of Claims 22, 23, 40 and 41 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly

point out and distinctly claim the subject matter which Applicants regard as the invention. Claim 2 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants traverse these rejections.

Applicants maintain that one of skill in the art appreciates that a “ $\beta$ -lactamase inhibiting agent” is a compound that exhibits  $\beta$ -lactamase inhibiting activity. Similarly, a “ $\beta$ -lactam medicament agent” prevents bacterial growth via  $\beta$ -lactam-type compounds, which are well-known antibiotics. When bacteria generate  $\beta$ -lactamase, they become resistant to the  $\beta$ -lactam-type antibiotics. The  $\beta$ -lactamase inhibiting activity prevents the bacteria from producing substances (*e.g.*,  $\beta$ -lactamase) that would otherwise provide resistance to such antibiotics. In other words,  $\beta$ -lactamase inhibiting compounds inhibit the natural defenses of bacteria. See for example, Applicants’ specification at Page 23, lines 18-30, which describes various aspects associated with the  $\beta$ -lactamase inhibiting activity. These claim terms are not indefinite, because one having skill in the art can appreciate the meaning of these terms, particularly in view of the specification.

In order to further facilitate prosecution and, in accordance with the discussions and agreement reached with the Examiner during the telephonic interview on October 18, 2007, Applicants have cancelled Claim 2 and amended Claims 22, 23, 40, and 41 to recite specific beta-lactam medicaments. Therefore, reconsideration and withdrawal of this rejection are respectfully requested.

### **ALLOWABLE SUBJECT MATTER**

The Examiner states that Claims 11-17 would be allowable if rewritten in independent form. Applicants thank the Examiner for the indication of allowable subject matter. Applicants respectfully submit that all of Claims 1, 3-6, 8-23 and 40-41 are in condition for allowance.

### **CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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